

For more information

For more information about mediation, or if you have any questions contact:

Fran Snyder
NJ Office of Dispute Settlement
P.O. Box 850
Trenton, NJ 08625

Voice: (609) 292-1773
Fax (609) 292-6292



NJ Government Records Council
P.O. Box 819
Trenton, N.J. 08625

Toll Free: 866-850-0511
Fax: 609-633-6337

Web Address: www.nj.gov/grc
E-Mail: grc@dca.state.nj.us

New Jersey Open Public Records Act Using Mediation to Resolve Complaints



❖ The Mediation Option

The Government Records Council offers the mediation services of the New Jersey State Office of Dispute Settlement to resolve disagreements arising from a request for public records. A trained neutral is available to assist the parties – the person who is denied access to a government record and the custodian who denied or failed to provide access -- reach a mutually acceptable resolution to their differences.

❖ What is Mediation?

Mediation is an informal, non-adversarial, voluntary problem-solving process. The purpose of the mediation is to:

- i. Promote discussion between the parties
- ii. Assist parties to develop and exchange pertinent information and data concerning the issues in dispute, and
- iii. Assist parties to develop proposals that will enable them to arrive at a mutually acceptable outcome.

The mediator is an impartial third party whose purpose is to help frame the issues, focus discussion, clarify points of agreement and disagreement, and assist parties in considering options to resolve the dispute. The mediator is not a judge and has no authority to determine the merits of the case or the outcome of the mediation, nor does a mediator act as an advocate for any party to the dispute. Ultimately, the parties control whether and how the dispute is resolved.

❖ Features of Mediation:

Voluntary - both parties must agree to participate in mediation. Any party to the mediation may withdraw at any time by notifying the mediator and all other parties involved. The mediator can also terminate the process at any point if it appears that further mediation would be unproductive. Settlement, too, is entirely voluntary. If a settlement is reached, however, the mediator will assist the parties in putting their agreement into written form. Once all parties sign a Mediation Agreement, it becomes binding and all parties are obligated to fulfill the promises made in the Agreement.

Confidential - information that is disclosed in the course of mediation and not otherwise obtainable is confidential, for settlement purposes only, and cannot be used in any future proceeding unless expressly agreed to by the parties. The only information that will be transmitted to the Government Records Council is a final settlement - if the parties reach one. No record of the proceeding - stenographic, electronic or otherwise - will be made. Parties will not be bound by anything said or done in mediation unless and until there is a written Settlement Agreement.

Informal - mediation is not a legal proceeding. There will be no testimony or witnesses, and rules of evidence do not apply. Rather, mediation is informal and aimed at reaching terms agreeable to both parties.

❖ Why Consider Mediation?

No cost - mediation is free to both parties. If both parties agree to try mediation, there is no obligation for the custodian to formally respond to the complaint, or for the person requesting records to prepare testimony.

Prompt, convenient and private - Mediation takes place at a mutually agreed upon time and place; the mediation session is a private, informal discussion.

No representation necessary - Although the parties may each bring a representative. It is essential however, that participants in the mediation have decision-making authority, that is, the ability to

commit to a settlement, or in the case of the custodian, to obtain such authority by telephone.

Parties control the outcome - Parties negotiate the terms that meet their interests. Parties will not be bound by anything said or done at the mediation unless an Agreement is signed. In addition, parties do not waive any of their rights by coming to mediation, nor will they be sanctioned for not participating or not reaching agreement.

❖ How does Mediation Work?

Once both parties sign the ***Agreement to Mediate***, the Government Records Council will refer the case to the NJ Office of Dispute Settlement (ODS). A mediator will contact the parties to conduct an initial conference call to describe the mediation process, to identify the people with decision-making authority who need to be present at the mediation session, to provide the mediator with a brief overview of the issues, and to schedule the mediation. It is the responsibility of each party to notify their representative, if any, of the pending mediation session.

The mediator opens the mediation session by describing his or her role as an impartial third party and explaining the mediation procedure. Each party then will have an opportunity to discuss issues of concern. The mediator will meet jointly and separately with the parties to further the exchange of information, to help parties understand one another's perspective, and to explore settlement options.

If settlement is reached, the Agreement will be reduced to writing and signed by the parties. A copy of the Agreement is given to each party and to the GRC. If there is no agreement, the matter will be referred back to the GRC without comment.

❖ Who are the Mediators?

ODS provides statewide neutral, third party mediation services to promote the use of means other than litigation to resolve-disputes affecting the public interest. Mediators are professionally trained in dispute resolution. ODS administers the mediation program under an interagency agreement with the Government Records Council pursuant to the Right to Know Law, (N.J.S.A. 47:1A-1 et seq.) as amended by the Open Public Records Act (OPRA)